

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD S BURGESS,

Plaintiff,

v.

VANCOUVER POLICE
DEPARTMENT, et al.,

Defendants.

CASE NO. 3:15-CV-05844-BHS-DWC

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND ORDER
ON MOTION TO SUBPOENA

Plaintiff Richard S Burgess, proceeding *pro se* and *in forma pauperis*, filed this civil rights Complaint pursuant to 42 U.S.C. § 1983. Before the Court are two motions filed by plaintiff: (1) Plaintiff's Proposed Second Amended Complaint, which the Court interprets as Plaintiff's Motion for Leave to File a Second Amended Complaint ("Motion to Amend," Dkt. 19) and (2) Plaintiff's Motion to Subpoena Medical Records (Dkt. 22).

1. Motion to Amend (Dkt. 19)

Because a court should freely and liberally grant leave to amend a complaint when justice requires, Fed. R. Civ. P. 15, and because there has been no opposition from Defendants, the

1 Court grants Plaintiff's Motion to Amend (Dkt. 19). The Clerk is directed to separately docket
2 Plaintiff's proposed second amended complaint (Dkt. 19) as Plaintiff's Second Amended
3 Complaint.

4 **2. Motion to Subpoena Medical Records (Dkt. 22)**

5 Before the Court is Plaintiff's "Motion to Subpoena Medical Records." Dkt. 22.
6 Although the basis for the Motion is not clear, the Court understands Plaintiff's Motion to
7 Subpoena Medical Records as a request for the Clerk of Court to sign and issue subpoenas
8 pursuant to Federal Rule of Procedure 45. *See* Dkt. 22. Defendants do not oppose Plaintiff's
9 Motion to Subpoena Medical Records.

10 Federal Rule of Civil Procedure 45(a)(3) provides that: "[t]he clerk must issue a
11 subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it
12 before service." Further, "[i]f a subpoena commands the production of documents, electronically
13 stored information or tangible things ... before trial, then before it is served on the person to
14 whom it is directed, a notice and a copy of the subpoena must be served on each party." Fed. R.
15 Civ. P. 45(a)(4).

16 Accordingly, the Court grants Plaintiff's Motion to Subpoena Medical Records (Dkt.
17 22). The Clerk's office is directed to issue Plaintiff the requested subpoena forms.

18 With respect to service of his subpoenas, Plaintiff is advised that while the Clerk may
19 issue subpoenas, any person over the age of 18 and not a party may serve a subpoena and the
20 party responsible for serving the subpoena must take reasonable steps to avoid imposing an
21 undue burden or expense on a person subject to the subpoena. *See* Fed. R. Civ. P. 45(b) and (d).
22 Furthermore, while a plaintiff proceeding *in forma pauperis* may be entitled to obtain service of
23 a subpoena pursuant to 28 U.S.C. § 1915(d), he still remains responsible, despite his *in forma*
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1 *pauperis* status, to pay all fees and costs associated with the subpoenas. *See Tedder v. Odel*, 890
2 F.2d 210, 211-12 (9th Cir. 1989).

3 Dated this 14th day of March, 2016.

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6 David W. Christel
7 United States Magistrate Judge
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